

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HOUSE BILL 2030

AN ACT

AMENDING SECTIONS 20-1095.02, 32-1101, 32-1121, 32-1122, 32-1123, 32-1132, 32-1136, 32-1137, 32-1139, 32-1152, 32-1154, 32-1158 AND 32-1165, ARIZONA REVISED STATUTES; AMENDING TITLE 33, CHAPTER 10, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-1324.01; AMENDING SECTION 41-2147, ARIZONA REVISED STATUTES; RELATING TO CONTRACTORS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 20-1095.02, Arizona Revised Statutes, is amended to
3 read:

4 20-1095.02. Exemptions: definition

5 A. ~~The provisions of~~ This article, except for section 20-1095.09, ~~do~~
6 DOES not apply to the following:

7 1. Warranties issued by manufacturers or sellers.

8 2. Service contract programs if a motor vehicle manufacturer has
9 financial responsibility for performance.

10 3. Warranties and service contracts issued by a corporation other than
11 a manufacturer or seller in connection with consumer products that are
12 distributed by the corporation if the issuing corporation:

13 (a) Is an affiliate of a consumer products manufacturer.

14 (b) By March 1 of each year submits to the director an independently
15 audited financial statement in which at least one officer of the issuing
16 corporation attests and a certified public accountant certifies that the
17 issuing corporation has and maintains a net worth in excess of one hundred
18 million dollars. Any information, documents and copies that are obtained by
19 or disclosed to the director or any other person pursuant to this subdivision
20 are not available for public inspection, except that the director may use
21 this information in any proceeding relating to this article.

22 4. A service company ~~which~~ THAT issues a service contract to persons
23 other than a consumer.

24 5. A service company ~~which~~ THAT is in the business of selling or
25 servicing any one of the following:

26 (a) Appliances or electronic equipment, or both.

27 (b) Residential heating, cooling or air conditioning systems.

28 (c) Mechanical equipment, other than motor vehicles or their
29 components.

30 6. Any person licensed pursuant to title 32, chapter 10, or not
31 required to be licensed because exempt pursuant to section 32-1121,
32 subsection A, paragraph ~~13~~ 12.

33 B. The director may employ independent examiners pursuant to section
34 20-156 to review and analyze the financial statements that are submitted
35 pursuant to subsection A, paragraph 3 of this section.

36 C. A motor vehicle dealer who is licensed under title 28, chapter 10,
37 who sells a service contract program approved by the director pursuant to
38 section 20-1095.06 and who notifies the director pursuant to section
39 20-1095.07 shall be exempt from the remainder of the requirements of this
40 article.

41 D. For the purposes of this section, "affiliate" means a corporation
42 that is owned or controlled by or is under common control with a
43 manufacturer.

1 Sec. 2. Section 32-1101, Arizona Revised Statutes, is amended to read:
2 32-1101. Definitions

3 A. In this chapter, unless the context otherwise requires:

4 1. "Advertisement" means any written or oral publication,
5 dissemination, solicitation or circulation ~~which~~ THAT is intended to directly
6 or indirectly induce any person to enter into an agreement for contracting
7 services with a contractor, including business cards and telephone directory
8 display advertisements.

9 2. "Commercial contractor" is synonymous with the terms "commercial
10 builder", "industrial builder" and "public works builder" and means any
11 person, firm, partnership, corporation, association or other organization, or
12 any combination, that, for compensation, undertakes to or offers to undertake
13 to, purports to have the capacity to undertake to, submits a bid to, does
14 himself or by or through others, or directly or indirectly supervises others,
15 except within residential property lines, to:

16 (a) Construct, alter, repair, add to, subtract from, improve, move,
17 wreck or demolish any building, highway, road, railroad, excavation or other
18 structure, project, development or improvement, or to do any part thereof,
19 including the erection of scaffolding or any other structure or work in
20 connection with the construction.

21 (b) Connect such structure or improvements to utility service lines
22 and metering devices and the sewer line.

23 (c) Provide mechanical or structural service for any such structure or
24 improvements.

25 3. "Contractor" is synonymous with the term "builder" and means any
26 person, firm, partnership, corporation, association or other organization, or
27 ~~a~~ ANY combination of any of them, that, for compensation, undertakes to or
28 offers to undertake to, purports to have the capacity to undertake to,
29 submits a bid or responds to a request for qualification or a request for
30 proposals for construction services to, does himself or by or through others,
31 or directly or indirectly supervises others to:

32 (a) Construct, alter, repair, add to, subtract from, improve, move,
33 wreck or demolish any building, highway, road, railroad, excavation or other
34 structure, project, development or improvement, or to do any part thereof,
35 including the erection of scaffolding or any other structure or work in
36 connection with the construction.

37 (b) Connect such structure or improvements to utility service lines
38 and metering devices and the sewer line.

39 (c) Provide mechanical or structural service for any such structure or
40 improvements.

41 4. "Dual licensed contractor" is synonymous with the term "commercial
42 and residential builder" and means any person, firm, partnership,
43 corporation, association or other organization, or any combination, that
44 undertakes to or offers to undertake to, purports to have the capacity to
45 undertake to, submits a bid to, does himself or by or through others, or

1 directly or indirectly supervises others under a single license on commercial
2 or residential property to:

3 (a) Construct, alter, repair, add to, subtract from, improve, move,
4 wreck or demolish any building, excavation or other structure or improvement,
5 including any appurtenances, or to do any part thereof.

6 (b) Connect such structure or improvements to utility service lines
7 and metering devices and the sewer line.

8 (c) Provide mechanical or structural service for any such structure or
9 improvements.

10 5. "Person" means an applicant, an individual, a member of a limited
11 liability company, a qualifying party, any partner of a partnership or
12 limited liability partnership or any officer, director, qualifying party,
13 trustee of a trust, beneficiary of a trust or owner of at least twenty-five
14 per cent of the stock or beneficial interest of a corporation.

15 6. "Registrar" means the registrar of contractors.

16 7. "Residential contractor" is synonymous with the term "residential
17 builder" and means any person, firm, partnership, corporation, association or
18 other organization, or ~~a~~ ANY combination of any of them, that undertakes to
19 or offers to undertake to, purports to have the capacity to undertake to,
20 submits a bid to, or does himself or by or through others, within residential
21 property lines:

22 (a) Construct, alter, repair, add to, subtract from, improve, move,
23 wreck or demolish any residential structure, such as houses, townhouses,
24 condominiums or cooperative units. Residential structures also include
25 apartment complexes of four units or less and any appurtenances on or within
26 residential property lines.

27 (b) Connect such residential structure to utility service lines,
28 metering devices or sewer lines.

29 (c) Provide mechanical or structural service for any such residential
30 structure.

31 B. "Contractor" includes subcontractors, specialty contractors, floor
32 covering contractors, landscape contractors, other than gardeners, and
33 consultants representing themselves as having the ability to supervise or
34 manage a construction project for the benefit of the property owner including
35 the hiring and firing of specialty contractors, the scheduling of work on the
36 project and the selection and purchasing of construction material.

37 C. For the purposes of this chapter, ~~"residential contractor"~~ does
38 not include an owner making improvements pursuant to section 32-1121,
39 subsection A, paragraph ~~5~~ 4.

40 D. Only contractors as defined in this section are licensed and
41 regulated by this chapter.

42 Sec. 3. Section 32-1121, Arizona Revised Statutes, is amended to read:
43 32-1121. Persons not required to be licensed; penalties

44 A. This chapter shall not be construed to apply to:

1 1. An authorized representative of the United States government, this
2 state or any county, incorporated city or town, reclamation district,
3 irrigation district or other municipality or political subdivision of this
4 state.

5 ~~2. Trustees of an express trust that is not formed for the purpose of~~
6 ~~conducting business as a contractor or officers of a court, if they are~~
7 ~~acting within the terms of their trust or office.~~

8 ~~3.~~ 2. Public utilities operating under regulation of the corporation
9 commission or construction, repair or operation incidental to discovering or
10 producing petroleum or gas, or the drilling, testing, abandoning or other
11 operation of a petroleum or gas well, if performed by an owner or lessee.

12 ~~4.~~ 3. Any materialman, manufacturer or retailer ~~furnishing~~ WHO
13 FURNISHES finished products, materials or articles of merchandise AND who
14 ~~does not install or attach such items or installs or~~ attaches such items if
15 the total value of the sales contract or transaction involving such items and
16 the cost of the installation or attachment of such items to a structure does
17 not exceed one thousand dollars, including labor, materials and all other
18 items, but excluding any electrical fixture or appliance that was designed by
19 the manufacturer, that is unaltered, unchanged or unmodified by any person,
20 that can be plugged into a common household electrical outlet utilizing a two
21 pronged or three pronged electrical connector and that does not use any other
22 form of energy, including natural gas, propane or other petroleum or gaseous
23 fuel, to operate or is attached by a nail, screw or other fastening device to
24 the frame or foundation of any residential structure. The materialman,
25 manufacturer or retailer shall inform the purchaser that the installation may
26 also be performed by a licensed contractor whose name and address the
27 purchaser may request.

28 ~~5.~~ 4. Owners of property who improve such property or who build or
29 improve structures or appurtenances on such property and who do the work
30 themselves, with their own employees or with duly licensed contractors, if
31 the structure, group of structures or appurtenances, including the
32 improvements thereto, are intended for occupancy solely by the owner and are
33 not intended for occupancy by members of the public as the owner's employees
34 or business visitors and the structures or appurtenances are not intended for
35 sale or for rent. In all actions brought under this chapter, proof of the
36 sale or rent or the offering for sale or rent of any such structure by the
37 owner-builder within one year after completion or issuance of a certificate
38 of occupancy is prima facie evidence that such project was undertaken for the
39 purpose of sale or rent. For the purposes of this paragraph, "sale" or
40 "rent" includes any arrangement by which the owner receives compensation in
41 money, provisions, chattels or labor from the occupancy or the transfer of
42 the property or the structures on the property.

43 ~~6.~~ 5. Owners of property who are acting as developers and who build
44 structures or appurtenances to structures on their property for the purpose
45 of sale or rent and who contract for such a project with a general contractor

1 licensed pursuant to this chapter and owners of property who are acting as
2 developers, who improve structures or appurtenances to structures on their
3 property for the purpose of sale or rent and who contract for such a project
4 with a general contractor or specialty contractors licensed pursuant to this
5 chapter. To qualify for the exemption under this paragraph, the licensed
6 contractors' names and license numbers shall be included in all sales
7 documents.

8 ~~7.~~ 6. Architects or engineers who are engaging in their professional
9 practice as defined in chapter 1 of this title and who hire or offer to hire
10 the services of a contractor for preconstruction activities relating to
11 investigation and discovery including:

- 12 (a) Subsurface utility location and designation services.
- 13 (b) Potholing.
- 14 (c) Drilling for any of the following:
 - 15 (i) Soil samples.
 - 16 (ii) Rock samples.
 - 17 (iii) Pavement samples.
- 18 (d) Locating existing features of a building or structure including
19 existing electrical, mechanical, plumbing and structural members.

20 ~~8.~~ 7. A person licensed, certified or registered pursuant to chapter
21 22 of this title or a person working under the direct supervision of a person
22 certified or qualified pursuant to chapter 22 of this title to the extent the
23 person is engaged in structural pest control.

24 ~~9.~~ 8. The sale or installation of finished products, materials or
25 articles of merchandise ~~which~~ THAT are not fabricated into and do not become
26 a permanent fixed part of the structure. This exemption does not apply if a
27 local building permit is required, if the total price of the finished
28 product, material or article of merchandise, including labor but excluding
29 any electrical fixture or appliance that was designed by the manufacturer,
30 that is unaltered, unchanged or unmodified by any person, that can be plugged
31 into a common household electrical outlet utilizing a two pronged or three
32 pronged electrical connector and that does not use any other form of energy,
33 including natural gas, propane or other petroleum or gaseous fuel, to operate
34 or is attached by a nail, screw or other fastening device to the frame or
35 foundation of any residential structure, is more than one thousand dollars or
36 if the removal of the finished product, material or article of merchandise
37 causes damage to the structure or renders the structure unfit for its
38 intended use.

39 ~~10.~~ 9. Employees of the owners of condominiums, townhouses,
40 cooperative units or apartment complexes ~~of four units or less~~ or the owners'
41 management agent or employees of the management agent repairing or
42 maintaining structures owned by them.

43 ~~11.~~ 10. Any person who engages in the activities regulated by this
44 chapter, as an employee of an exempt property owner or as an employee with
45 wages as the person's sole compensation.

1 ~~12-~~ 11. A surety company or companies ~~which~~ THAT are authorized to
2 transact business in this state and ~~which~~ THAT undertake to complete a
3 contract on which they issued a performance or completion bond, provided all
4 construction work is performed by duly licensed contractors.

5 ~~13-~~ 12. Insurance companies ~~which~~ THAT are authorized to transact
6 business in this state and ~~which~~ THAT undertake to perform repairs resulting
7 from casualty losses pursuant to the provisions of a policy, provided all
8 construction work is performed by duly licensed contractors.

9 ~~14-~~ 13. Any person other than a licensed contractor engaging in any
10 work or operation on one undertaking or project by one or more contracts, for
11 which the aggregate contract price, including labor, materials and all other
12 items, but excluding any electrical fixture or appliance that was designed by
13 the manufacturer, that is unaltered, unchanged or unmodified by any person,
14 that can be plugged into a common household electrical outlet utilizing a two
15 pronged or three pronged electrical connector and that does not use any other
16 form of energy, including natural gas, propane or other petroleum or gaseous
17 fuel, to operate or is attached by a nail, screw or other fastening device to
18 the frame or foundation of any residential structure, is less than one
19 thousand dollars. The work or operations ~~which~~ THAT are exempt under this
20 paragraph shall be of a casual or minor nature. This exemption does not
21 apply:

22 (a) In any case in which the performance of the work requires a local
23 building permit.

24 (b) In any case in which the work or construction is only a part of a
25 larger or major operation, whether undertaken by the same or a different
26 contractor, or in which a division of the operation is made in contracts of
27 amounts less than one thousand dollars, excluding any electrical fixture or
28 appliance that was designed by the manufacturer, that is unaltered, unchanged
29 or unmodified by any person, that can be plugged into a common household
30 electrical outlet utilizing a two pronged or three pronged electrical
31 connector and that does not use any other form of energy, including natural
32 gas, propane or other petroleum or gaseous fuel, to operate or is attached by
33 a nail, screw or other fastening device to the frame or foundation of any
34 residential structure, for the purpose of evasion of this chapter or
35 otherwise.

36 (c) To a person who utilizes any form of advertising to the public in
37 which the person's unlicensed status is not disclosed by including the words
38 "not a licensed contractor" in the advertisement.

39 ~~15-~~ 14. A person who is licensed, certified or registered pursuant to
40 title 41, chapter 16 and who is not otherwise required to be licensed under
41 this chapter or an employee of such person.

42 ~~16-~~ 15. A person who functions as a gardener by performing lawn,
43 garden, shrub and tree maintenance.

44 16. A LANDLORD, THE LANDLORD'S EMPLOYEES OR AGENTS, THE PROPERTY
45 MANAGER OR EMPLOYEES OF THE PROPERTY MANAGER PURSUANT TO SECTION 33-1324.01.

1 B. A person who is licensed to perform work in a particular trade
2 pursuant to this chapter shall not be required to obtain and maintain a
3 separate license for mechanical or structural service work performed within
4 the scope of such trade by such person.

5 C. Any person who does not have an exemption from licensure pursuant
6 to subsection A, paragraph ~~14~~ 13, subdivision (c) of this section is subject
7 to prosecution for a violation of section 44-1522. The attorney general may
8 investigate the act or practice and take appropriate action pursuant to title
9 44, chapter 10, article 7.

10 Sec. 4. Section 32-1122, Arizona Revised Statutes, is amended to read:
11 32-1122. Qualifications for license

12 A. A contractor's license shall be issued only by act of the registrar
13 of contractors. The registrar shall:

14 1. Classify and qualify applicants for a license.

15 2. If necessary, change the license classification of a licensee in
16 the case of a title reclassification, with or without a bond rider for the
17 purpose of continuing liability on the bond.

18 3. Conduct investigations the registrar deems necessary.

19 4. Establish written examinations if deemed necessary to protect the
20 health and safety of the public.

21 B. To obtain or renew a license under this chapter, the applicant
22 shall:

23 1. Submit to the registrar of contractors a verified application on
24 forms that are prescribed by the registrar of contractors and that contain
25 the following information and shall advise the registrar of any change in the
26 information within thirty days:

27 (a) A designation of the classification of license that is sought by
28 the applicant.

29 (b) If the applicant is an individual, the applicant's name and
30 address.

31 (c) If the applicant is a partnership, the names and addresses of all
32 partners with a designation of any limited partners.

33 (d) If the applicant is a corporation, an association or any other
34 organization, the names and addresses of the president, vice-president, if
35 any, secretary and treasurer or the names and addresses of the functional
36 equivalent of these officers, the directors and the owners of twenty-five per
37 cent or more of the stock or beneficial interest.

38 (e) The name and address of the qualifying party.

39 (f) If the applicant is a corporation, evidence that the corporation
40 is in good standing with the corporation commission.

41 (g) The address or location of the applicant's place of business and
42 the mailing address if it is different from the applicant's place of
43 business.

44 (h) The applicant's current privilege license number issued pursuant
45 to section 42-5005.

1 (i) Proof that the applicant has complied with the statutes or rules
2 governing workers' compensation insurance.

3 2. Submit the appropriate bond and fee required under this chapter.

4 C. To obtain a contractor's license under this chapter other than a
5 residential contractor's license, the applicant shall submit a detailed
6 statement of current financial condition containing information required by
7 the registrar of contractors on a form furnished by or acceptable to the
8 registrar of contractors. Notwithstanding any other law, a swimming pool
9 contractor shall also submit a detailed statement of current financial
10 condition as required by this subsection.

11 D. To obtain, **HOLD** or renew a license under this chapter, each person
12 shall be of good character and reputation. Lack of good character and
13 reputation may be established by showing that a person has engaged in
14 contracting without a license or committed any act that, if committed or done
15 by any licensed contractor, would be grounds for suspension or revocation of
16 a contractor's license or by showing that the person was named on a
17 contractor's license that was suspended or revoked in another state.

18 E. To obtain a license under this chapter, a person shall not have had
19 a license refused or revoked, within one year before the person's
20 application, or shall not have engaged in the contracting business, nor shall
21 the person have submitted a bid without first having been licensed within one
22 year before the person's application, nor shall a person act as a contractor
23 between the filing of the application and actual issuance of the
24 license. The registrar may find any of those actions or circumstances to be
25 excusable if there was reasonable doubt as to the need for licensure or the
26 actions of the applicant did not result in an unremedied hardship or danger
27 or loss to the public. A person who has been convicted of contracting
28 without a license is not eligible to obtain a license under this chapter for
29 one year after the date of the last conviction.

30 F. Before a license is issued, the qualifying party shall:

31 1. Have had a minimum of four years' practical or management trade
32 experience, at least two of which must have been within the last ten years,
33 dealing specifically with the type of construction, or its equivalent, for
34 which the applicant is applying for a license. Technical training in an
35 accredited college or university or in a manufacturer's accredited training
36 program may be substituted for a portion of such experience, but in no case
37 may credited technical training exceed two years of the required four years'
38 experience. The registrar of contractors may reduce the four years'
39 practical or management experience requirement if in the registrar's opinion
40 it has been conclusively shown by custom and usage in the particular industry
41 or craft involved that the four year requirement is excessive. The registrar
42 may waive the work experience documentation and verification or the
43 examination requirement if the records reflect that the qualifying party is
44 currently or has previously been a qualifying party for a licensee in this
45 state in the same classification within the preceding five years.

1 2. Successfully show, by written examination taken not more than two
2 years before application, if required, qualification in the kind of work for
3 which the applicant proposes to contract, the applicant's general knowledge
4 of the building, safety, health and lien laws of the state, administrative
5 principles of the contracting business and the rules adopted by the registrar
6 of contractors pursuant to this chapter, demonstrate knowledge and
7 understanding of construction plans and specifications applicable to the
8 particular industry or craft and of the standards of construction work and
9 techniques and practices in the particular industry or craft and demonstrate
10 a general understanding of other related construction trades, in addition to
11 any other matters as may be deemed appropriate by the registrar to determine
12 that the qualifying party meets the requirements of this chapter. The
13 registrar shall maintain multiple versions of examinations for each type of
14 license that requires an examination.

15 G. No license shall be issued to a minor, to any partnership in which
16 one of the partners is a minor or to any corporation in which a corporate
17 officer is a minor.

18 H. Before receiving, renewing and holding a license pursuant to this
19 chapter, the registrar may require a license applicant or licensee to submit
20 to the registrar a full set of fingerprints and the fees required in section
21 41-1750. The registrar shall submit the fingerprints and fees to the
22 department of public safety for the purpose of obtaining a state and federal
23 criminal records check pursuant to section 41-1750 and Public Law
24 92-544. The department of public safety may exchange this fingerprint data
25 with the federal bureau of investigation.

26 Sec. 5. Section 32-1123, Arizona Revised Statutes, is amended to read:

27 32-1123. Unlicensed contractors; contract bidding; license
28 denial; exemptions; warning

29 A. Except as provided in subsection D of this section, if an entity
30 that is not licensed pursuant to this chapter bids on a contract for a
31 project with an aggregate worth of more than one thousand dollars, excluding
32 any electrical fixture or appliance that was designed by the manufacturer,
33 that is unaltered, unchanged or unmodified by any person, that can be plugged
34 into a common household electrical outlet utilizing a two pronged or three
35 pronged electrical connector and that does not use any other form of energy,
36 including natural gas, propane or other petroleum or gaseous fuel, to operate
37 or is attached by a nail, screw or other fastening device to the frame or
38 foundation of any residential structure, **FOR ONE YEAR AFTER THE DATE OF THE**
39 **BID** the registrar shall not issue ~~the entity~~ a license pursuant to this
40 chapter ~~for one year after the date of the bid~~ **TO ANY OF THE FOLLOWING:**

1 1. THE ENTITY.

2 2. A PERSON WHO:

3 (a) IS A MEMBER OF THE ENTITY, A QUALIFYING PARTY OF THE ENTITY, A
4 PARTNER OF THE ENTITY, ANY DIRECTOR OR OFFICER OF THE ENTITY, A TRUSTEE OF
5 THE ENTITY IF THE ENTITY IS A TRUST OR A BENEFICIARY OF THE ENTITY IF THE
6 ENTITY IS A TRUST.

7 (b) OWNS AT LEAST TWENTY-FIVE PER CENT OF THE STOCK OR BENEFICIAL
8 INTEREST OF THE ENTITY.

9 3. AN ENTITY WITH COMMON MEMBERSHIP, QUALIFYING PARTIES, PARTNERS,
10 OFFICERS, DIRECTORS, TRUSTEES, BENEFICIARIES OR OWNERSHIP AS THE ENTITY IF
11 THE OWNERSHIP CONSISTS OF AT LEAST TWENTY-FIVE PER CENT OF THE STOCK OR
12 BENEFICIAL INTEREST OF EACH ENTITY.

13 B. This section does not apply to an entity that bids on a contract
14 for either of the following:

15 1. A department of transportation project.

16 2. A project that is subject to the federal acquisition regulation,
17 title 48 Code of Federal Regulations, including the department of defense
18 federal acquisition regulation.

19 C. This section does not affect the licensing exemptions prescribed in
20 section 32-1121.

21 D. If an entity bids on a contract for a project pursuant to
22 subsection A of this section and the project has an aggregate worth of more
23 than one thousand dollars, excluding any electrical fixture or appliance that
24 was designed by the manufacturer, that is unaltered, unchanged or unmodified
25 by any person, that can be plugged into a common household electrical outlet
26 utilizing a two pronged or three pronged electrical connector and that does
27 not use any other form of energy, including natural gas, propane or other
28 petroleum or gaseous fuel, to operate or is attached by a nail, screw or
29 other fastening device to the frame or foundation of any residential
30 structure, and less than twenty thousand dollars, the registrar shall issue
31 the entity a written warning relating to the unlicensed activity if the
32 registrar has not previously issued the entity a warning.

33 Sec. 6. Section 32-1132, Arizona Revised Statutes, is amended to read:

34 32-1132. Residential contractors' recovery fund

35 A. The residential contractors' recovery fund is established, to be
36 administered by the registrar, from which any person injured by an act,
37 representation, transaction or conduct of a residential contractor licensed
38 pursuant to this chapter that is in violation of this chapter or the rules
39 adopted pursuant to this chapter may be awarded in the county where the
40 violation occurred an amount of not more than thirty thousand dollars for
41 damages sustained by the act, representation, transaction or conduct. An
42 award from the fund is limited to the actual damages suffered by the claimant
43 as a direct result of the contractor's violation but shall not exceed an
44 amount necessary to complete or repair a residential structure or
45 appurtenance within residential property lines. Actual damages shall not be

1 established by bids supplied by or the value of work performed by a person or
 2 entity that is not licensed pursuant to this chapter and that is required to
 3 be licensed pursuant to this chapter. If the claimant has paid a deposit or
 4 down payment and no actual work is performed or materials are delivered, the
 5 award of actual damages shall not exceed the exact dollar amount of the
 6 deposit or down payment plus interest at the rate of ten per cent a year from
 7 the date the deposit or down payment is made or not more than thirty thousand
 8 dollars, whichever is less. Interest shall not be paid from the fund on any
 9 other awards under this chapter unless ordered by a court of competent
 10 jurisdiction. An award from the fund shall not be available to persons
 11 injured by an act, representation, transaction or conduct of a residential
 12 contractor who was not licensed pursuant to this chapter or whose license was
 13 in an inactive status, expired, cancelled, revoked, suspended or not issued
 14 at the time of the contract. No more than the maximum individual award from
 15 the fund shall be made on any individual residence or to any injured person.
 16 Notwithstanding any other provision of law, monies in the residential
 17 contractors' recovery fund shall not be directly awarded for attorney fees or
 18 costs except in contested cases appealed to the superior court.

19 **B. ANY PERSON RECEIVING AN AWARD FROM THE FUND UNDER THIS ARTICLE IS**
 20 **DEEMED TO HAVE ASSIGNED TO THE REGISTRAR THE PERSON'S RIGHTS FOR RECOVERY**
 21 **AGAINST THE RESPONSIBLE RESIDENTIAL CONTRACTOR LICENSED PURSUANT TO THIS**
 22 **CHAPTER TO THE EXTENT OF THE PERSON'S AWARD FROM THE FUND.**

23 ~~B.~~ **C.** Except as provided in section 32-1152, subsection C, every
 24 person making application for a contractor's license or for renewal of a
 25 contractor's license to engage in residential contracting shall pay an
 26 assessment of not more than six hundred dollars during the biennial license
 27 period for deposit in the fund. In the event that the registrar does not
 28 issue the license, this assessment shall be returned to the applicant.

29 Sec. 7. Section 32-1136, Arizona Revised Statutes, is amended to read:
 30 32-1136. Statute of limitations; recovery from fund

31 ~~A. An action for a judgment which may subsequently result in an order~~
 32 ~~for collection~~ **A CLAIM FOR RECOVERY** from the fund **FOR ACTUAL DAMAGES CAUSED**
 33 **BY A RESIDENTIAL CONTRACTOR'S VIOLATION OF THIS CHAPTER** shall not be
 34 commenced later than two years ~~from~~ **AFTER** the date ~~of the commission of the~~
 35 ~~act by the contractor that is the cause of the injury or from the date of~~
 36 ~~occupancy. When any injured person commences action for a judgment which may~~
 37 ~~result in collection from the fund, the injured person shall notify the~~
 38 ~~registrar in writing to this effect at the time of the commencement of the~~
 39 ~~action. The registrar may at any time intervene in and defend any such~~
 40 ~~action~~ **THAT THE RESPONSIBLE RESIDENTIAL CONTRACTOR'S LICENSE WAS REVOKED OR**
 41 **SUSPENDED AS A RESULT OF A VIOLATION OF THIS CHAPTER THAT CAUSED THE DAMAGES**
 42 **FOR WHICH THE CLAIM FOR RECOVERY IS MADE.**

43 ~~B. When any injured person recovers a valid judgment against any~~
 44 ~~residential contractor for such act, representation, transaction or conduct~~
 45 ~~which is in violation of this chapter or the rules adopted pursuant to this~~

~~chapter, the injured person may on twenty days' written notice to the registrar apply to the court for an order directing payment out of the fund, of the amount unpaid on the judgment, subject to the limitations stated in this article. If the injured person failed to give notice to the registrar at the time of commencement of the action as required by subsection A of this section, the court may direct payment out of the fund upon receipt of a consent to payment signed on behalf of the registrar. If the injured person has given notice to the registrar as required by subsection A of this section, the court may direct payment out of the fund either on receipt of a consent to payment signed on behalf of the registrar or, in the absence of any written consent, after the notice period required by subsection B of this section. If the court receives written objections by the registrar, the court shall not direct payment from the fund without affording the registrar a reasonable opportunity to present and support his objections.~~

B. IF A RESIDENTIAL CONTRACTOR'S LICENSE HAS BEEN REVOKED OR SUSPENDED AS A RESULT OF A VIOLATION OF THIS CHAPTER, THE REGISTRAR MAY ORDER PAYMENT FROM THE RESIDENTIAL CONTRACTORS' RECOVERY FUND AS PRESCRIBED IN THIS ARTICLE TO COMPENSATE AN ELIGIBLE CLAIMANT FOR ACTUAL DAMAGES CAUSED BY A RESIDENTIAL CONTRACTOR'S VIOLATION OF THIS CHAPTER. IF THE CONTRACTOR CONTESTS THE AMOUNT OR PROPRIETY OF THE PAYMENT, THE CONTRACTOR SHALL RESPOND WITHIN TEN DAYS AFTER THE DATE OF SERVICE BY REQUESTING A HEARING TO DETERMINE THE AMOUNT OR PROPRIETY OF THE PAYMENT. FAILURE BY THE CONTRACTOR TO RESPOND IN WRITING WITHIN TEN DAYS AFTER THE DATE OF SERVICE IS A WAIVER BY THE CONTRACTOR OF THE RIGHT TO CONTEST THE AMOUNT CLAIMED OR TO BE AWARDED. SERVICE MAY BE MADE BY PERSONAL SERVICE TO THE CONTRACTOR OR BY MAILING A COPY OF THE NOTICE BY REGISTERED OR CERTIFIED MAIL WITH POSTAGE PREPAID TO THE CONTRACTOR'S LATEST ADDRESS OF RECORD ON FILE IN THE REGISTRAR'S OFFICE. IF SERVICE IS MADE BY REGISTERED OR CERTIFIED MAIL, IT IS EFFECTIVE FIVE DAYS AFTER THE NOTICE IS MAILED. EXCEPT AS PROVIDED IN SECTION 41-1092.08, SUBSECTION H, THE CONTRACTOR OR INJURED PERSON MAY SEEK JUDICIAL REVIEW OF THE REGISTRAR'S FINAL AWARD PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6.

C. The injured person shall not be the spouse of the residential contractor or the personal representative of the spouse of the residential contractor.

D. ~~The court shall proceed on an application in a summary manner and, on the hearing, the~~ injured person is required to show that ~~he~~ THE INJURED PERSON:

~~1. Has given notice as required by subsections A and B of this section.~~

~~2. Has obtained a judgment which has become final, as provided in subsection B of this section, stating the amount and the amount owing at the date of the application.~~

1 ~~3-~~ 1. Has proceeded against any existing bond covering the
2 residential contractor and has not collected upon such bond an amount of
3 thirty thousand dollars or more, except when the award is made pursuant to
4 subsection E of this section or section 32-1154.

5 ~~4-~~ 2. Is not aware of any personal or real property or other assets
6 of the debtor which can be applied in satisfaction of the ~~judgment~~ CLAIM.

7 E. ~~The court shall make an order directed to the registrar requiring~~
8 ~~payment from the fund of whatever sum it finds to be payable on the claim, in~~
9 ~~accordance with this section, if the court is satisfied on the hearing of the~~
10 ~~truth of all matters required to be shown by the injured person by subsection~~
11 ~~D of this section. The recovery limits established under this article apply~~
12 ~~to all judgments awarded after September 1, 2002.~~ If the injured person has
13 recovered a portion of ~~his~~ THE INJURED PERSON'S loss from sources other than
14 the fund, the registrar, ~~if the award is made pursuant to section 32-1154, or~~
15 ~~the court~~ shall deduct the amount recovered from other sources from the
16 amount of actual damages suffered pursuant to section 32-1132, subsection A
17 and direct the difference, not to exceed thirty thousand dollars, to be paid
18 from the fund.

19 ~~F. On receipt of a certified copy of the order specified in subsection~~
20 ~~E of this section, the registrar may authorize payment from the residential~~
21 ~~contractors' recovery fund even if an appeal has been instituted but not~~
22 ~~completed.~~

23 Sec. 8. Section 32-1137, Arizona Revised Statutes, is amended to read:

24 32-1137. Notice of authorized payment to injured person

25 On authorization of payment from the residential contractors' recovery
26 fund, the registrar shall notify the injured person that:

27 1. The amount authorized for payment is subject to repayment by the
28 recipient if the ~~judgment of the court is finally~~ ORDER OF THE REGISTRAR IS
29 reversed.

30 2. It is the responsibility of the recipient to respond to an appeal
31 from the ~~judgment~~ ORDER OF THE REGISTRAR.

32 3. On appeal from the ~~judgment~~ ORDER, postponement of acceptance by
33 the injured person of the amount authorized for payment does not operate as a
34 waiver of any rights of the injured person.

35 Sec. 9. Section 32-1139, Arizona Revised Statutes, is amended to read:

36 32-1139. Liability of fund for each residential contractor's
37 license; suspension of license; repayment

38 A. The liability of the fund shall not exceed two hundred thousand
39 dollars for any one residential contractor's license. If claims against the
40 fund on behalf of any one residential contractor's license exceed two hundred
41 thousand dollars, the claims shall be paid in order of the date of entry of
42 the order of the registrar ~~or court~~, and the registrar ~~or a court~~ ON entering
43 an order for payment after the sum of two hundred thousand dollars has been
44 paid from the fund shall modify the order indicating that no further recovery
45 from the fund shall be allowed.

1 B. If any amount is paid from the fund in settlement of a claim
2 arising from the act, representation, transaction or conduct of a residential
3 contractor, the license of the contractor shall be automatically suspended
4 by operation of law until the amount paid from the fund is repaid in full,
5 plus interest at the rate of ten per cent a year. Any person who is or was,
6 at the time of the act or omission, named on a license that has been
7 suspended because of a payment from the recovery fund is not eligible to
8 receive a new license or retain another existing license that also shall be
9 suspended by operation of law, nor shall any suspended license be
10 reactivated, until the amount paid from the fund is repaid as provided in
11 this subsection.

12 Sec. 10. Section 32-1152, Arizona Revised Statutes, is amended to
13 read:

14 32-1152. Residential bonds

15 A. Before granting an original RESIDENTIAL OR DUAL contractor's
16 license, the registrar shall require of the applicant a surety bond in a form
17 acceptable to the registrar or a cash deposit as provided in this section.
18 AT THE TIME OF FILING AN ORIGINAL APPLICATION, THE APPLICANT SHALL PROVIDE TO
19 THE REGISTRAR AN ESTIMATE OF THE APPLICANT'S VOLUME OF RESIDENTIAL WORK FOR
20 EACH OF THE TWO ENSUING TWELVE MONTH PERIODS AND THE BASIS ON WHICH THE
21 ESTIMATE WAS DETERMINED. No RESIDENTIAL OR DUAL contractor's license may be
22 renewed unless the applicant's surety bond or cash deposit is in full force
23 and effect. AT THE TIME OF FILING A RESIDENTIAL OR DUAL RENEWAL APPLICATION,
24 THE APPLICANT SHALL PROVIDE TO THE REGISTRAR AN ESTIMATE OF THE APPLICANT'S
25 VOLUME OF RESIDENTIAL WORK FOR EACH OF THE TWO ENSUING TWELVE MONTH PERIODS,
26 NEITHER OF WHICH SHALL BE LESS THAN THE AVERAGE OF THE APPLICANT'S ACTUAL
27 VOLUME OF RESIDENTIAL WORK FOR THE PRECEDING TWO TWELVE MONTH PERIODS UNLESS
28 THE APPLICANT ALSO FILES AN EXPLANATION ACCEPTABLE TO THE REGISTRAR FOR THE
29 LESSER AMOUNTS. AN ESTIMATE OF AN APPLICANT'S VOLUME OF RESIDENTIAL WORK IS
30 NOT REQUIRED IF THE MAXIMUM BOND AMOUNT THAT IS SET BY RULE HAS ALREADY BEEN
31 OR IS BEING PROVIDED TO THE REGISTRAR.

32 B. The bonds, or the cash deposit as provided in this section, shall
33 be in the name of the licensee in amounts fixed by the registrar with the
34 following schedules after giving due consideration to the ESTIMATES OF THE
35 volume of RESIDENTIAL work AS PRESCRIBED IN SUBSECTION A OF THIS SECTION and
36 the classification contemplated by the applicant:

37 1. DUAL LICENSED SWIMMING POOL general ~~commercial-building~~ contractors
38 and ~~subclassifications-of~~ RESIDENTIAL SWIMMING POOL general ~~commercial~~
39 contractors shall furnish a surety bond or cash deposit in an amount ~~which~~
40 THAT shall be determined as follows:

41 (a) If the estimated annual volume of RESIDENTIAL construction work of
42 the applicant is ten million dollars or more, the applicant shall furnish a
43 surety bond or cash deposit of not less than fifty thousand dollars or more
44 than one hundred thousand dollars.

1 (b) If the estimated annual volume of RESIDENTIAL construction work of
2 the applicant is more than five million dollars and less than ten million
3 dollars, the applicant shall furnish a surety bond or cash deposit of not
4 less than thirty-five thousand dollars or more than seventy-five thousand
5 dollars.

6 (c) If the estimated annual volume of RESIDENTIAL construction work of
7 the applicant is more than one million dollars and less than five million
8 dollars, the applicant shall furnish a surety bond or cash deposit of not
9 less than fifteen thousand dollars or more than fifty thousand dollars.

10 (d) If the estimated annual volume of RESIDENTIAL construction work of
11 the applicant is more than five hundred thousand dollars and less than one
12 million dollars, the applicant shall furnish a surety bond or cash deposit of
13 not less than ten thousand dollars or more than twenty-five thousand dollars.

14 (e) If the estimated annual volume of RESIDENTIAL construction work of
15 the applicant is more than one hundred fifty thousand dollars and less than
16 five hundred thousand dollars, the applicant shall furnish a surety bond or
17 cash deposit of not less than five thousand dollars or more than fifteen
18 thousand dollars.

19 (f) If the estimated annual volume of RESIDENTIAL construction work of
20 the applicant is less than one hundred fifty thousand dollars, the applicant
21 shall furnish a surety bond or cash deposit of five thousand dollars.

22 ~~2. Specialty commercial contractors shall furnish a surety bond or~~
23 ~~cash deposit in an amount which shall be determined as follows:~~

24 ~~(a) If the estimated annual volume of construction work of the~~
25 ~~applicant is ten million dollars or more, the applicant shall furnish a~~
26 ~~surety bond or cash deposit of not less than thirty seven thousand five~~
27 ~~hundred dollars or more than fifty thousand dollars.~~

28 ~~(b) If the estimated annual volume of construction work of the~~
29 ~~applicant is more than five million dollars and less than ten million~~
30 ~~dollars, the applicant shall furnish a surety bond or cash deposit of not~~
31 ~~less than seventeen thousand five hundred dollars or more than thirty seven~~
32 ~~thousand five hundred dollars.~~

33 ~~(c) If the estimated annual volume of construction work of the~~
34 ~~applicant is more than one million dollars and less than five million~~
35 ~~dollars, the applicant shall furnish a surety bond or cash deposit of not~~
36 ~~less than seven thousand five hundred dollars or more than twenty-five~~
37 ~~thousand dollars.~~

38 ~~(d) If the estimated annual volume of construction work of the~~
39 ~~applicant is more than five hundred thousand dollars and less than one~~
40 ~~million dollars, the applicant shall furnish a surety bond or cash deposit of~~
41 ~~not less than five thousand dollars or more than seventeen thousand five~~
42 ~~hundred dollars.~~

1 ~~(e) If the estimated annual volume of construction work of the~~
2 ~~applicant is more than one hundred fifty thousand dollars and less than five~~
3 ~~hundred thousand dollars, the applicant shall furnish a surety bond or cash~~
4 ~~deposit of not less than two thousand five hundred dollars or more than seven~~
5 ~~thousand five hundred dollars.~~

6 ~~(f) If the estimated annual volume of construction work of the~~
7 ~~applicant is less than one hundred fifty thousand dollars, the applicant~~
8 ~~shall furnish a surety bond or cash deposit of two thousand five hundred~~
9 ~~dollars.~~

10 ~~3. The total amount of the surety bond or cash deposit required of a~~
11 ~~licensee who holds more than one license under paragraphs 1 and 2 of this~~
12 ~~subsection shall be the sum of the surety bond or cash deposit required for~~
13 ~~each license based on the estimated annual volume of construction work of the~~
14 ~~applicant allocated to and performed under each license. The applicant at~~
15 ~~his option may post a single surety bond or cash deposit, which shall be the~~
16 ~~sum of the bonds or deposits determined under this subsection for all such~~
17 ~~licenses.~~

18 ~~4.~~ 2. General dual licensed contractors and subclassifications of
19 general dual licensed contractors shall furnish a single surety bond or cash
20 deposit ~~with amounts~~ IN AN AMOUNT for ~~each~~ THE classification of RESIDENTIAL
21 license that ~~are~~ IS determined based on the ~~volume of commercial work as~~
22 ~~determined under paragraph 1 of this subsection and the~~ volume of residential
23 work as determined under paragraph ~~5~~ 3 of this subsection. Liability under
24 the bond or cash deposit shall be limited to the amount established for ~~each~~
25 ~~commercial or~~ THE residential license and is subject to the limitations and
26 requirements set forth in subsection E of this section.

27 ~~5.~~ 3. General residential contractors and subclassifications of
28 general residential contractors shall furnish a surety bond or cash deposit
29 in an amount of not more than ~~fifteen~~ THIRTY thousand dollars and not less
30 than five thousand dollars.

31 ~~6.~~ 4. Specialty dual licensed contractors shall furnish a single
32 surety bond or cash deposit ~~with amounts~~ IN AN AMOUNT for ~~each~~ THE
33 classification of RESIDENTIAL license that ~~are~~ IS determined based on the
34 ~~volume of commercial work as determined under paragraph 2 of this subsection~~
35 ~~and the~~ volume of residential work as determined under paragraph ~~7~~ 5 of this
36 subsection. Liability under the bond or cash deposit shall be limited to the
37 amount established for ~~each commercial or~~ THE residential license and is
38 subject to the limitations and requirements set forth in subsection E of this
39 section.

40 ~~7.~~ 5. Specialty residential contractors shall furnish a surety bond
41 or cash deposit in an amount of not more than ~~seven~~ FIFTEEN thousand ~~five~~
42 ~~hundred~~ dollars and not less than one thousand dollars.

~~8. Dual licensed swimming pool contractors and residential swimming pool general contractors shall furnish a surety bond or cash deposit in the same amounts based on the volume of work as determined under paragraph 1 of this subsection for a general commercial contractor.~~

C. Dual licensed contractors and residential contractors shall also either:

1. Furnish an additional surety bond or cash deposit in the amount of two hundred thousand dollars solely for actual damages suffered by persons injured as described in section 32-1131. This bond shall be subject to the limitations on the amounts that may be awarded to individual claimants as established in section 32-1132.

2. Participate in the residential contractors' recovery fund and pay the assessment prescribed by section 32-1132.

D. The surety bonds shall be executed by the contractor as principal with a corporation duly authorized to transact surety business in this state. Evidence of a surety bond shall be submitted to the registrar in a form acceptable to the registrar. The contractor may in the alternative establish a cash deposit in the amount of the bond with the state treasurer in accordance with rules adopted by the registrar. Such cash bond monies shall be deposited, pursuant to sections 35-146 and 35-147, in the contractors' cash bond fund. The state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the state general fund. Such cash deposits may be withdrawn, if there are no outstanding claims against them, two years after the termination of the license in connection with which the cash is deposited. The cash deposit may be withdrawn two years after the filing of a commercial surety bond as a replacement to the cash deposit.

~~E. The bonds or deposit required by subsection B of this section shall be for the benefit of and shall be subject to claims by the registrar of contractors for failure to pay any sum required pursuant to this chapter. The bond or deposit required by subsection B, paragraphs 1, 2 and 3 of this section is for the benefit of and subject to claims by a licensee under this chapter or a lessee, owner or co-owner of nonresidential real property including, but not limited to, a tenant in common or joint tenant, or their successors in interest, who has a direct contract with the licensee against whose bond or deposit the claim is made and who is damaged by the failure of the licensee to build or improve a structure or appurtenance on that real property at the time the work was performed in a manner not in compliance with the requirements of any building or construction code applicable to the construction work under the laws of this state or any political subdivision, or if no such code was applicable, in accordance with the standards of construction work approved by the registrar. The residential bond or deposit required by subsection B, paragraphs 4-1 through 8-5 of this section is for the benefit of and subject to claims by any person furnishing labor, materials or construction equipment on a rental~~

1 basis used in the direct performance of a construction contract involving a
2 residential structure or by persons injured as defined in section
3 32-1131. The bond or deposit required by subsection C, paragraph 1 of this
4 section is for the benefit of and is subject to claims only by persons
5 injured as described in section 32-1131. The person seeking recovery from
6 the bond or cash deposit shall maintain an action at law against the
7 contractor if claiming against the cash deposit or against the contractor and
8 surety if claiming against the surety bond. If the person seeking recovery
9 is required to give the notice pursuant to section 33-992.01, ~~he~~ THE PERSON
10 is entitled to seek recovery only if ~~he~~ THE PERSON has given such notice and
11 has made proof of service. The surety bond or cash deposit shall be subject
12 to claims until the full amount thereof is exhausted. The court may award
13 reasonable ~~attorney's~~ ATTORNEY fees in a judgment against a contractor's
14 surety bond or cash deposit. No suit may be commenced on the bond or for
15 satisfaction from the cash deposit after the expiration of two years
16 following the commission of the act or delivery of goods or rendering of
17 services on which the suit is based, except that time for purposes of claims
18 for fraud shall be measured as provided in section 12-543. The surety bond
19 or cash deposit shall be continuous in form and shall be conditioned so that
20 the total aggregate liability of the surety or cash deposit for all claims,
21 including reasonable ~~attorney's~~ ATTORNEY fees, shall be limited to the face
22 amount of the surety bond or cash deposit irrespective of the number of years
23 the bond or cash deposit is in force. If the corporate surety desires to
24 make payment without awaiting court action, the amount of any bond filed in
25 compliance with this chapter shall be reduced to the extent of any payment or
26 payments made by the corporate surety in good faith thereunder. Any such
27 payments shall be based on priority of written claims received by the
28 corporate surety prior to court action. If more than one cash deposit
29 exists, the judgment against the contractor shall state which cash deposit
30 shall be used to satisfy the judgment. A certified copy of the judgment
31 shall then be filed with the registrar, and such judgment shall specify that
32 it may be satisfied from the contractor's cash deposit. Priority for payment
33 shall be based upon the time of filing with the registrar. Upon receipt of a
34 certified copy of the judgment, the registrar may authorize payment from the
35 cash deposit of the amount claimed or of whatever lesser amount remains on
36 file. In any action against a cash deposit, the claimant, at the time of
37 filing suit, may notify the registrar in writing of the action against the
38 cash deposit, but shall not name as a defendant in the action the registrar,
39 the treasurer, ~~or~~ the state. Failure to so notify the registrar at the time
40 of filing suit may result in the cash deposit being withdrawn by the licensee
41 ~~prior to~~ BEFORE judgment pursuant to subsection D of this section.

42 F. When a corporate surety cancels a bond, the surety shall not less
43 than thirty days ~~prior to~~ BEFORE the effective date of the cancellation give
44 the principal and the registrar a written notice of the cancellation. Notice
45 to the principal shall be by certified mail in a sealed envelope with postage

1 fully prepaid. Proof of notice to the principal shall be made available to
2 the registrar on request. On reduction or depletion of the cash deposit, the
3 registrar shall immediately notify the licensee of ~~said~~ THE reduction or
4 depletion and that the licensee must replenish the cash deposit or furnish a
5 surety bond on or before thirty days from the date of ~~said~~ THE reduction or
6 depletion or the contractor's license shall be suspended on the thirtieth day
7 without further notice or hearing. Notice to the contractor shall be by
8 certified mail in a sealed envelope with postage fully prepaid ~~thereon~~,
9 addressed to the contractor's latest address of record in the registrar's
10 office. The contractor's license shall be suspended by operation of law on
11 the date the bond is canceled or thirty days from the date of reduction or
12 depletion of the cash deposit unless a replacement bond or cash deposit is on
13 file with the registrar.

14 G. The registrar and the state treasurer shall have no personal
15 liability for the performance of duties relating to the bonds, cash deposits,
16 certificates of deposit, investment certificates or share accounts required
17 or permitted by this chapter as long as such duties are performed in good
18 faith.

19 H. In the following instances the registrar, after a hearing, may
20 require, as a condition precedent to issuance, renewal, continuation or
21 removal of suspension of a license, a surety bond or cash deposit in an
22 amount and duration to be fixed by the registrar based upon the seriousness
23 of the violations, which shall be not more than ten times the amount required
24 by subsection B of this section:

25 1. When a license of either the applicant or the qualifying party has
26 been suspended or revoked or a surety bond or cash deposit requirement has
27 been increased under section 32-1154 previously as the result of disciplinary
28 action for a violation of this chapter.

29 2. When either the applicant or qualifying party was an officer,
30 member, partner or qualifying party for a licensee at any time during which
31 cause for disciplinary action occurred resulting in suspension or revocation
32 of such licensee's license and such applicant or qualifying party had
33 knowledge of or participated in the act or omission ~~which~~ THAT was the cause
34 of such disciplinary action for a violation of this chapter.

35 3. The bonds required by this subsection shall be in addition to any
36 other bond or cash deposit required by this chapter or any other bond
37 required of a contractor by an owner or any other contracting party on any
38 contract undertaken by ~~him~~ THE CONTRACTOR pursuant to the authority of such
39 license.

40 Sec. 11. Section 32-1154, Arizona Revised Statutes, is amended to
41 read:

42 32-1154. Grounds for suspension or revocation of license;
43 continuing jurisdiction; civil penalty

44 A. The holder of a license or any person listed on a license pursuant
45 to this chapter shall not commit any of the following acts or omissions:

1 1. Abandonment of a contract or refusal to perform after submitting a
2 bid on work without legal excuse for the abandonment or refusal.

3 2. Departure from or disregard of plans or specifications or any
4 building codes of the state or any political subdivision of the state in any
5 material respect ~~which~~ THAT is prejudicial to another without consent of the
6 owner or the owner's duly authorized representative and without the consent
7 of the person entitled to have the particular construction project or
8 operation completed in accordance with such plans and specifications and
9 code.

10 3. Violation of any rule adopted by the registrar.

11 4. Failure to comply with the statutes or rules governing social
12 security, workers' compensation or unemployment insurance.

13 5. Failure to pay income taxes, withholding taxes or any tax imposed
14 by title 42, chapter 5, articles 1 and 4 and incurred in the operation of the
15 licensed business.

16 6. Misrepresentation of a material fact by the applicant in obtaining
17 a license.

18 7. The doing of a wrongful or fraudulent act by the licensee as a
19 contractor resulting in another person being substantially injured.

20 8. Conviction of a felony.

21 9. Failure in a material respect by the licensee to complete a
22 construction project or operation for the price stated in the contract, or in
23 any modification of the contract.

24 10. Aiding or abetting a licensed or unlicensed person to evade this
25 chapter, knowingly or recklessly combining or conspiring with a licensed or
26 unlicensed person, allowing one's license to be used by a licensed or
27 unlicensed person or acting as agent, partner, associate or otherwise of a
28 licensed or unlicensed person with intent to evade this chapter.

29 11. Failure by a licensee or agent or official of a licensee to pay
30 monies in excess of seven hundred fifty dollars when due for materials or
31 services rendered in connection with the licensee's operations as a
32 contractor when the licensee has the capacity to pay or, if the licensee
33 lacks the capacity to pay, when the licensee has received sufficient monies
34 as payment for the particular construction work project or operation for
35 which the services or materials were rendered or purchased.

36 12. Failure of a contractor to comply with any safety or labor laws or
37 codes of the federal government, state or political subdivisions of the
38 state.

39 13. Failure in any material respect to comply with this chapter.

40 14. Knowingly entering into a contract with a contractor for work to be
41 performed for which a license is required with a person not duly licensed in
42 the required classification.

43 15. Acting in the capacity of a contractor under any license issued
44 under this chapter in a name other than as set forth upon the license.

1 16. False, misleading or deceptive advertising whereby any member of
2 the public may be misled and injured.

3 17. Knowingly contracting beyond the scope of the license or licenses
4 of the licensee.

5 18. Contracting or offering to contract or submitting a bid while the
6 license is under suspension or while the license is on inactive status.

7 19. Failure to notify the registrar in writing within a period of
8 fifteen days of any disassociation of the person who qualified for the
9 license. Such licensee shall have sixty days from the date of such
10 disassociation to qualify through another person.

11 20. Subsequent discovery of facts which if known at the time of
12 issuance of a license or the renewal of a license would have been grounds to
13 deny the issuance or renewal of a license.

14 21. Having a person named on the license who is named on any other
15 license in this state or in another state which is under suspension or
16 revocation unless the prior revocation was based solely on a violation of
17 this paragraph.

18 22. Continuing a new single family residential construction project
19 with actual knowledge that a pretreatment wood-destroying pests or organisms
20 application was either:

21 (a) Not performed at the required location.

22 (b) Performed in a manner inconsistent with label requirements, state
23 law or rules.

24 23. Failure to take appropriate corrective action to comply with this
25 chapter or with rules adopted pursuant to this chapter without valid
26 justification within a reasonable period of time after receiving a written
27 directive from the registrar. The written directive shall set forth the time
28 within which the contractor is to complete the remedial action. The time
29 permitted for compliance shall not be less than fifteen days from the date of
30 issuance of the directive. A license shall not be revoked or suspended nor
31 shall any other penalty be imposed for a violation of this paragraph until
32 after a hearing has been held.

33 24. Prohibit, threaten to prohibit, retaliate, threaten to retaliate or
34 otherwise intimidate any contractor or materialman from serving a preliminary
35 notice pursuant to section 33-992.01.

36 B. The registrar may on the registrar's own motion, and shall on the
37 written complaint of any person, investigate the acts of any contractor
38 within this state and may temporarily suspend, with or without imposition of
39 specific conditions in addition to increased surety bond or cash deposit
40 requirements, or permanently revoke any or all licenses issued under this
41 chapter if the holder of the license issued pursuant to this chapter is
42 guilty of or commits any of the acts or omissions set forth in subsection A
43 of this section.

1 C. The expiration, cancellation, suspension or revocation of a license
2 by operation of law or by decision and order of the registrar or a court of
3 law or the voluntary surrender of a license by a licensee shall not deprive
4 the registrar of jurisdiction to proceed with any investigation of or action
5 or disciplinary proceeding against such licensee, or to render a decision
6 suspending or revoking such a license, or denying the renewal or right of
7 renewal of such license.

8 D. The registrar may impose a civil penalty of not to exceed five
9 hundred dollars on a contractor for each violation of subsection A, paragraph
10 23 of this section. Civil penalties collected pursuant to this subsection
11 shall be deposited in the residential contractors' recovery fund. The
12 failure by the licensee to pay any civil penalty imposed under this
13 subsection results in the automatic revocation of the license thirty days
14 after the effective date of the order providing for the civil penalty. No
15 future license may be issued to an entity consisting of a person associated
16 with the contractor, as defined in section 32-1101, subsection A, paragraph
17 5, unless payment of any outstanding civil penalty is tendered.

18 E. The registrar shall impose a civil penalty of not to exceed one
19 thousand dollars on a contractor for each violation of subsection A,
20 paragraph 18 of this section. Civil penalties collected pursuant to this
21 subsection shall be deposited in the residential contractors' recovery
22 fund. The failure by the licensee to pay any civil penalty imposed under
23 this subsection results in the automatic permanent revocation of the license
24 thirty days after the effective date of the order providing for the civil
25 penalty. No future license may be issued to an entity consisting of a person
26 associated with the contractor, as defined in section 32-1101, subsection A,
27 paragraph 5, unless payment of any outstanding civil penalty is tendered.

28 ~~F. Notwithstanding any other provisions in this chapter, if a~~
29 ~~contractor's license has been revoked or has been suspended as a result of an~~
30 ~~order to remedy a violation of this chapter, and the contractor refuses or is~~
31 ~~unable to comply with the order of the registrar to remedy the violation, the~~
32 ~~registrar may order payment from the residential contractors' recovery fund~~
33 ~~to remedy the violation. The registrar shall serve the contractor with a~~
34 ~~notice setting forth the amount claimed or to be awarded. If the contractor~~
35 ~~contests the amount or propriety of the payment, the contractor shall respond~~
36 ~~within ten days of the date of service by requesting a hearing to determine~~
37 ~~the amount or propriety of the payment. Failure by the contractor to respond~~
38 ~~in writing within ten days of the date of service shall be deemed a waiver by~~
39 ~~the contractor of the right to contest the amount claimed or to be awarded.~~
40 ~~Service may be made by personal service to the contractor or by mailing a~~
41 ~~copy of the notice by registered mail with postage prepaid to the~~
42 ~~contractor's latest address of record on file in the registrar's office. If~~
43 ~~service is made by registered mail, it is effective five days after the~~
44 ~~notice is mailed. Except as provided in section 41-1092.08, subsection H,~~

~~the contractor or injured person may seek judicial review of the registrar's final award pursuant to title 12, chapter 7, article 6.~~

Sec. 12. Section 32-1158, Arizona Revised Statutes, is amended to read:

32-1158. Minimum elements of a contract

A. From and after December 31, 1992 until December 31, 2007, any contract in an amount of more than one thousand dollars and less than one hundred fifty thousand dollars entered into between a contractor and the owner of a property to be improved shall contain in writing at least the following information:

1. The name of the contractor and the contractor's business address and license number.

2. The name and mailing address of the owner and the jobsite address or legal description.

3. The date the parties entered into the contract.

4. The estimated date of completion of all work to be performed under the contract.

5. A description of the work to be performed under the contract.

6. The total dollar amount to be paid to the contractor by the owner for all work to be performed under the contract, including all applicable taxes.

7. The dollar amount of any advance deposit paid or scheduled to be paid to the contractor by the owner.

8. The dollar amount of any progress payment and the stage of construction at which the contractor will be entitled to collect progress payments during the course of construction under the contract.

B. From and after December 31, 2007, any contract in an amount of more than one thousand dollars entered into between a contractor and the owner of a property to be improved shall contain in writing at least the following information:

1. The name of the contractor and the contractor's business address and license number.

2. The name and mailing address of the owner and the jobsite address or legal description.

3. The date the parties entered into the contract.

4. The estimated date of completion of all work to be performed under the contract.

5. A description of the work to be performed under the contract.

6. The total dollar amount to be paid to the contractor by the owner for all work to be performed under the contract, including all applicable taxes.

7. The dollar amount of any advance deposit paid or scheduled to be paid to the contractor by the owner.

C. At the time of signing a contract the owner shall be provided a legible copy of all documents signed and a written and signed receipt for and in the true amount of any cash paid to the contractor by the owner.

Sec. 13. Section 32-1165, Arizona Revised Statutes, is amended to read:

Except as authorized by section 32-1121, subsection A, paragraph ~~14~~ 13, subdivision (c), it is a class 1 misdemeanor for any person to advertise that ~~he~~ THE PERSON is able to perform any service or contract for compensation subject to regulation by the registrar under the terms of this chapter unless a license under the terms of this chapter is first obtained regardless of whether ~~his~~ THE PERSON'S operations as a contractor are otherwise exempt.

33-1324.01. Landlord's maintenance and repairs; violation; classification

B. SUBSECTION A OF THIS SECTION DOES NOT APPLY TO:

2. INSTALLING, REPAIRING OR REPLACING THE CENTRAL AIR CONDITIONING, VENTILATION AND HEATING UNIT IF THE WORK MATERIALLY AFFECTS HEALTH AND SAFETY AND EXTENDS BEYOND AND AFFECTS MORE THAN ONE DWELLING UNIT AT THE SAME TIME.

1 C. THE DIRECTOR OF THE DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY
2 SHALL ADOPT RULES TO IMPLEMENT THIS SECTION.

3 D. A LANDLORD WHO VIOLATES THIS SECTION IS GUILTY OF A CLASS 1
4 MISDEMEANOR.

5 Sec. 15. Section 41-2147, Arizona Revised Statutes, is amended to
6 read:

7 41-2147. Director; qualifications; appointment; salary; powers
8 and duties

9 A. The governor shall appoint a director of the department pursuant to
10 section 38-211. The director shall serve at the pleasure of the governor.

11 B. The director shall be experienced in administration and the
12 technical knowledge necessary to administer this chapter.

13 C. The compensation of the director shall be as determined pursuant to
14 section 38-611.

15 D. The director with the approval of the governor shall appoint a
16 deputy director, a deputy director of the office of manufactured housing, the
17 state fire marshal of the office of fire marshal, the state fire training
18 officer and the fire resource coordinator, all of whom serve at the pleasure
19 of the director and are exempt from chapter 4, article 5 of this title.
20 Compensation for the deputy directors and the fire marshal shall be as
21 determined pursuant to section 38-611.

22 E. The director shall establish and have authority over the functions
23 of the office of manufactured housing, the office of state fire marshal and
24 the office of administration and shall appoint employees necessary to perform
25 the duties of articles 2, 3 and 4 of this chapter.

26 F. The director shall employ any deputies, investigators and
27 assistants and shall procure all equipment and records that are necessary to
28 enforce this chapter. With respect to the enforcement of section 41-2194,
29 the director or the director's designees are vested with the authority to
30 issue a citation in accordance with section 13-3903 or to issue a cease and
31 desist order to any violators of this chapter. When the director or the
32 director's designees conduct investigations they may receive criminal history
33 record information from the department of public safety and other law
34 enforcement entities.

35 G. In order to protect public health, safety and welfare, the director
36 may revoke or suspend a license.

37 H. The director may issue citations to licensees for alleged
38 violations of this chapter or rules adopted pursuant to this chapter.

39 I. The director, on the director's motion or on the written request of
40 the licensee, may reduce, at the director's discretion, the amount of any
41 administrative penalty imposed.

42 J. THE DIRECTOR SHALL ADOPT RULES TO IMPLEMENT SECTION 33-1324.01.

43 Sec. 16. Effective date

44 Section 32-1152, Arizona Revised Statutes, as amended by this act, is
45 effective from and after December 31, 2011.